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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation
Against:

Citation No. 09-0136-L

ROBIN JEANNE HUGHES
P.O. BOX 11349
Costa Mesa, CA 92627

OAH No. 2010050728

Vocational Nurse License No.
VN 149221

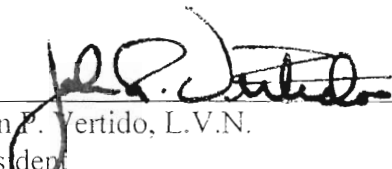
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on January 28, 2011.

IT IS SO ORDERED this 29th day of December, 2010.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Matter of the Citation Against:

ROBIN JEANNE HUGHES, LVN

Vocational Nurse License No. 149221,

Respondent.

Case No. VN-2005-2091

OAH No. 2010050728

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 30, 2010, in San Diego, California.

Desiree I. Kellogg, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California.

Respondent Robin Jeanne Hughes, LVN, appeared telephonically, represented herself, and was present throughout the proceeding.

The matter was submitted on September 30, 2010.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 3, 2009, complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians (the Board), Department of Consumer Affairs, State of California., signed Citation Order Number 09-136-L. The citation alleged that Robin Jeanne Hughes (respondent or Ms. Hughes) was a licensed vocational nurse, that on May 2, 2006, Ms. Hughes struck a child in her care on the hand and arm causing the skin to be reddened, that Ms. Hughes' conduct was unprofessional, and that such misconduct warranted the imposition of a fine in the amount of \$1,001.

The citation was served on Ms Hughes, who timely filed a notice of appeal

A hearing on the citation was set for September 30, 2010.

By facsimile forwarded to the Office of Administrative Hearings on September 28, 2010, Ms. Hughes, who currently lives in Idaho, requested a continuance, asserting she was not well enough to travel to California for the hearing. No documentary evidence was offered to support the existence of a medical condition that would support the granting of a continuance. Complainant opposed the continuance. On September 29, 2010, Presiding Administrative Law Judge Alan R. Alvord denied Ms. Strong's motion for a continuance. Thereafter, the parties agreed to a telephonic hearing with the matter to be heard on September 30, 2010, as scheduled.

On September 30, 2010, the administrative record was opened, jurisdictional documents were presented, opening statements were given, documentary evidence was introduced, sworn testimony was provided, closing arguments were given, the record was closed, and the matter was submitted.

Vocational Nurse License History

2. On August 8, 1990, the Board issued Vocational Nurse License Number VN 149221 to Robin Jeanne Hughes. Respondent's license is renewed through November 30, 2011. There is no history of any previous administrative discipline having been imposed against respondent's license.

3. Complainant produced a warning letter addressed to Ms. Hughes dated September 15, 1998. That letter referenced the Board's investigation into complaints about the manner in which Ms. Hughes behaved towards minor patients and their parents. The letter did not follow any type of hearing in which Ms. Hughes had notice of the charges, the opportunity to examine those unidentified persons who filed the complaints, or to produce evidence in defense, mitigation or explanation. The letter was simply intended to place Ms. Hughes on notice that she was responsible for providing services within the scope of her practice, to be honest and ethical, and to exercise sound judgment. The letter warned that "Future substantiated reports that you have engaged in similar behavior or otherwise violated the regulations governing your practice may result in the initiation of disciplinary action."

No evidence was offered to establish that Ms. Hughes received the September 15, 1998, letter. Ms. Hughes specifically testified that she did not receive the September 15, 1998, letter until a few weeks ago when it was provided to her by complainant's counsel. No evidence refuted this testimony.

The existence of the September 15, 1998, letter did not establish the truth of any of the allegations set forth in that letter, nor did it establish that Ms. Hughes was put on notice of those allegations.

The May 2, 2005, Incident

4. Maxim Healthcare Services employed Ms. Hughes as a licensed vocational nurse for many years. On May 2, 2005, she was assigned to provide nursing services to Christopher O., a medically fragile three and one-half year old child at the family home in Costa Mesa. While Christopher O. did not speak and suffered from a variety of medical conditions, including a developmental delay and respiratory issues, and was fed through a g-tube, he nevertheless could be rambunctious and challenging. During the course of Ms. Hughes' interaction with Christopher O. on May 2, Ms. Hughes lost her patience, tapped or slapped Christopher O. in and about the right upper extremity, and said in a very loud voice, "I said 'No.'" The force of the physical contact, coupled with Christopher O.'s compromised circulation, caused reddening to his right hand and possibly his right arm. Christopher O. began crying, likely as much a result of his surprise at being disciplined as the force Ms. Hughes used to gain his attention. There was sufficient redness that Ms. Hughes went to the kitchen to obtain a cold compress. Christopher O.'s mother, who did not speak English and had been out of the home when the incident occurred, came home and heard her son crying. Christopher O. immediately ran to his mother, who comforted her son.

5. The mother asked Ms. Hughes what happened. Ms. Hughes testified that she replied, "I said 'No' and corrected Christopher by tapping him on the wrist." The mother may have understood Ms. Hughes to say "by slapping him on the wrist." The mother was sufficiently concerned that she placed a phone call to a social worker. Ms. Hughes was sufficiently concerned that she called Maxim Healthcare Services and spoke with Sharon Troy, RN, her supervisor. Ms. Hughes told Nurse Troy, "I just lost my patience with Christopher and hit him on his hand, left a red mark and Mom came home and saw the red mark. I know I shouldn't have lost my patience, but I did. Mom wants to talk to you with an interpreter." A series of phone calls followed, which resulted in Nurse Troy asking Ms. Hughes to report back to the office.

6. Ms. Hughes provided an unusual occurrence report dated May 2, 2006, that stated:

"Very active today. Redirected innumerable times to stand down off of chair, return medical supplies, pick up chart off floor, etc. Pt. R hand back struck by this nurse. Christopher cried with large tears being shed. Mom entered as we were going to another area. 'Why is he crying?' Explained that his hand had been hit to discontinue action. Child comforted by mother, crying stopped. Office called to notify of action . . . I departed without saying goodbye to mother and patient. Note: No redness, swelling, abrasions nor broken skin to child's R hand. Fingers and hand moving freely at time of departure."

Maxim Healthcare Services terminated Ms. Hughes' employment following the submission of her incident report.

7. The Costa Mesa Police Department investigated a report of child abuse the following day. The investigating officer examined Christopher and found no evidence of

trauma. The mother said she had no intention of filing criminal charges, but contacted others concerning the incident to arrange for a different nurse to care for her son.

Ms. Hughes' Background, Training, and Experience

8. Ms. Hughes was born in Indiana in October 1957. She grew up in Orange County, California, graduating from Westminster High School in 1975. Ms. Hughes attended Orange Coast Community College off and on between 1974 and 2004, ultimately receiving an associate's degree in Liberal Arts in 1984.

Ms. Hughes began working as a nurse's aide in 1975. She continued this employment and became certified as a nurse's aide in 1987. Ms. Hughes obtained the education, training and experience necessary for licensure as a vocational nurse. The Board issued a license to her in 1990 and she has been employed as a licensed vocational nurse since then.

Ms. Hughes moved from California to Idaho in 2010, where she is pursuing the education, training and experience necessary to obtain a registered nursing license.

Ms. Hughes' Testimony

9. The thrust of Ms. Hughes' testimony concerning the incident was to describe the minimal force she used to redirect Christopher's behavior, describing her conduct as "a correction" and "a tap." Ms. Hughes admitted the physical contact was sufficiently forceful to cause some reddening on his right, and that was the reason Ms. Hughes intended to put a cold compress on Christopher's hand. Ms. Hughes denied "slapping" Christopher or "hitting" him. She denied telling Nurse Troy that she slapped Christopher. She testified that her use of the word "hit" in her written statement was an incorrect characterization of what she actually did, and very likely the result of the stress she felt she was under. Ms. Hughes believed that there was a lot of miscommunication surrounding the incident.

Ms. Hughes expressed some remorse, and testified that as a result of this incident she learned that nurses should take a "time-out" when under stress, that it is important not to provide any form of discipline to a patient that might be misunderstood, and to document everything very carefully. She testified that she had not engaged in any similar occurrences.

Applicable Legal Matters

10. Protection of the public is the highest priority for the Board of Vocational Nursing and Psychiatric Technicians in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Bus. & Prof. Code, § 2841.1.)

A licensed vocational nurse must safeguard patient/client health and safety by actions and must adhere to standards of the profession and incorporate ethical and behavioral standards of professional practice including maintaining professional boundaries with the

patient/client. (Cal.Code.Reg., tit. 16, § 2518.6.) The Board may suspend or revoke a license for unprofessional conduct, which includes “the use of excessive force upon or the mistreatment or abuse of any patient.”¹ (Bus. & Prof. Code § 2878, subd. (a)(4).) Under Business and Professions Code section 125.9, the Board has the authority to issue a citation to a licensee for violation of the Vocational Nursing Practice Act, and under California Code of Regulations, title 16, section 2523 the Board’s executive officer may issue a citation in lieu of proceeding with more formal disciplinary action.

Administrative proceedings are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785.) The main purpose of license discipline is protection of the public through the prevention of future harm, and the improvement and rehabilitation of the licensee. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

The appropriate standard of proof in administrative citation proceedings is the preponderance of the evidence standard. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.)

Evaluation

11. Ms. Hughes engaged in unprofessional conduct on May 2, 2006, when she used excessive force in an effort to control the disruptive behavior a three and one-half-year-old medically fragile, developmentally delayed patient. The force was sufficient to cause a reddening of the skin on the boy’s hand and the need to treat the area with a cold compress. Expert testimony was unnecessary to establish that the amount of force Ms. Hughes used exceeded that normally applied in similar circumstances and exceeded professional boundaries. Fortunately, the patient suffered no more than brief discomfort and distress.

Ms. Hughes lost her employment as a result of the incident. This sanction cannot be overlooked in imposing a civil penalty in this matter. The purpose of this proceeding is not to punish Ms. Hughes, but to gain her attention, to remind her that the use of excessive force upon a patient is improper and unethical, that she is not the sole judge of how much force is excessive, and that force should never be the result of frustration. Another purpose of this proceeding is to serve as a permanent record of Ms. Hughes’ wrongdoing, so that any future misconduct will result in the imposition of a far more drastic sanction.

Under all the circumstances, it is concluded that the imposition of a civil penalty of \$500.00, together with the Board’s formal decision in this matter, will gain Ms. Hughes’ attention and document her misconduct.

¹ By statute, “‘excessive force’ means force clearly in excess of that which would normally be applied in similar clinical circumstances.”

LEGAL CONCLUSIONS

Cause Exists to Affirm and Modify the Citation

1. Cause exists to affirm Ms. Hughes' violation of Business and Professions Code sections 2518.6, subdivision (a), and 2878, subdivision (a)(4). A preponderance of the evidence established that Ms. Hughes engaged in unprofessional conduct, used excessive force in her care and treatment of a patient, and failed to adhere to relevant professional and ethical standards.

Cause exists to modify the administrative penalty (fine) previously imposed in Citation Order No. 09-0136-L and to order Ms. Hughes to pay an administrative penalty (fine) in the amount of \$500.

Cause exists to issue an order of abatement prohibiting Ms. Hughes from abusing, mistreating, or using excessive force upon any patient.

These Legal Conclusions are based on all Factual Findings.


ORDERS

The violations set forth in Citation Order No. 09-0136-L are affirmed.

Respondent Robin Jeanne Hughes shall pay \$500 to the Board of Vocational Nursing and Psychiatric Technicians within sixty (60) days of the effective date of this Decision.

Respondent Robin Jeanne Hughes is hereby enjoined and prohibited from abusing, mistreating, or using excessive force upon any patient in her care.

DATED: October 20, 2010



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

**BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**

2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945

Phone: (916) 263-7800 Fax: (916) 263-7857 Web: www.bvnpt.ca.gov**CITATION ORDER**

August 3, 2009

Robin Hughes, LVN
PO Box 11349
Costa Mesa, CA 92627

Dear Ms. Hughes:

Pursuant to Business and Professions Code section 125.9 the Board of Vocational Nursing and Psychiatric Technicians (hereinafter referred to as the "Board") issues this class "B" citation.

Date of Issuance	Citation Number	Fine Assessed
August 3, 2009	09-0136-L	\$1,001.00

Licensing History

Board records reflect that on **August 8, 1990**, the Board issued license number **VN 149221** to **Robin Jeanne Hughes**; said license will expire on **November 30, 2009**, unless renewed.

Cause for Citation

Violation of **Section 2878 (a)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following:

- (a) Unprofessional conduct..."

Violation of **Section 2878 (a) (4)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
(4) The use of excessive force upon or the mistreatment or abuse of any patient..."

Violation of **Section 2518.6 (b)** of the California Code of Regulations, which reads as follows:

- (a) "A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice."

Explanation of Violation:

A Board investigation substantiated your unprofessional conduct. On or about May 2, 2006, while employed by Maxim Healthcare Services of Laguna Hills, CA, you admittedly lost patience with a minor child in your care and subsequently struck him on his hand and arm leaving them reddened.

The conduct you exhibited is inconsistent with any model of professional nursing and is a clear violation of the Nursing Practice Act. Your actions demonstrate a failure to exercise the degree of professional judgment expected of a licensed vocational nurse. Such actions are inconsistent with standard practice and unacceptable for the licensed vocational nurse. Additionally, your actions evidence a lack of sensitivity to the rights and health care needs of clients. These failures diminish your therapeutic effectiveness as a provider of care and jeopardize the health, safety, and welfare of clients. Moreover, such actions are inconsistent with standard practice as a licensed vocational nurse. **Be advised that future violations of this type or others that violate the rules and regulations of your practice may result in formal disciplinary action against your license, up to and including revocation.**

Fine and/or Order of Abatement

You are hereby ordered to pay an administrative penalty (fine) in the amount of **\$1,001.00** within 30 days from the date this citation was served (mailed); no later than **September 3, 2009**.

Payment of this administrative penalty should be made directly to the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833. Payment will only be accepted in the form of a cashier's check or money order and must include the citation number. Please complete and submit the enclosed Payment of Fine – Waiver of Appeal Rights form with your payment.

Additionally, Board records indicate that fingerprints are required since your original licensure. **Therefore, you must submit your fingerprints within 30 days of the date of this notice.** Enclosed are "Request for Live Scan Service" forms. Please follow the instructions for completing the forms. Live Scan sites are located at most Police and Sheriff stations and some large school districts.

Appeal Rights

You may appeal this citation or any portion thereof. Please use the enclosed Notice of Appeal form to request an Informal Citation Review Conference or a formal Administrative Hearing.

Your request for an Informal Citation Review Conference must be in writing and submitted to the Board within **fourteen (14) calendar days after service of the citation**.

Your request for a formal Administrative Hearing must also be in writing and submitted to the Board within **thirty (30) calendar days after service of the citation**.

Pursuant to Section 125.3 of the Business and Professions Code, the Board has authority to request the administrative law judge to direct you to pay reasonable costs for the investigation and/or enforcement of this citation. Please refer to the enclosed Statement of Rights for additional appeal information.

Failure to request an Informal Citation Review or Administrative Hearing within the time specified above will waive your right to contest this citation. If you neither pay the fine nor request a review within the allotted time frame, **your license will not be renewed** until the fine is paid.


TERESA BELLO-JONES, J.D., M.S.N., R.N.

Executive Officer

August 3, 2009

Date

ATTACHMENTS

- Payment of Fine – Waiver of Appeal Rights
- Notice of Appeal
- Statement of Rights
- Request for Live Scan Service
- Instructions for Using Live Scan Fingerprinting as a Condition of License Renewal
- Notice on Collection of Personal Information for Applicants and Licensees

AS